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IN THE

Supreme Court of the United States

Term, 1963

No. 549

ESTATE OF PETER CHRISTOFF, deceased.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PENNSYLVANIA

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No.

ESTATE OF PETER CHRISTOFF, deceased.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PENNSYLVANIA

Petitioner, Constantin D. Cozinacis, prays that a Writ of Certiorari issue to review the decree of the Supreme Court of Pennsylvania entered into the above-entitled case on July 2, 1963.

Opinions Below

The opinion of the Supreme Court of the Commonwealth of Pennsylvania is reported at 411 Pa. 419, 192 A. 2d 737, and is set out in Appendix A, pp. 13-17, *infra*. The opinion of the Orphans' Court of Allegheny County, Pennsylvania, is unreported and is included in the Record as printed for the use of the Court below at pp. 619a-704a. Nine copies of the Record are filed herewith.

Jurisdiction

The decree of the Supreme Court of the Commonwealth of Pennsylvania, affirming the decree of the Orphans' Court

of Allegheny County, Pennsylvania, was entered on July 2, 1963 (App. C, p. 20). A timely petition for rehearing filed on July 11, 1963 (App. C, p. 20) was denied on July 20, 1963 (App. C, p. 20). The jurisdiction of this Court is invoked under 28 U. S. C. Sec. 1257(3) since the validity of a treaty of the United States is drawn in question.

Question Presented

Whether the Supreme Court of Pennsylvania properly granted recognition to the decree of a Greek Court declaring that an American citizen domiciled in Pennsylvania had adopted a Greek citizen domiciled in Greece in proceedings which required the American citizen to appear before a Greek Consul who for that purpose was appointed as a judge to perform a judicial act in Illinois over the American citizen, without the consent of the United States whose Consular Convention with Greece does not confer upon Greek Consuls the right to sit as judges or to exercise judicial functions within the United States.

Treaty and Constitutional Provision Involved

The treaty provision involved is Article X of the Consular Convention with Greece of 1902, 33 Stat. 2122, 2128, 1 Malloy 855, 858. It is printed at Appendix B, *infra*, p. 18. The Constitutional provision involved is Article VI, Clause 2 of the Constitution of the United States, and it is printed at Appendix B, *infra*, pp. 18-19.

Statement of the Case

In 1955 a Court of the Kingdom of Greece decreed that decedent Peter Christoff, an American citizen domiciled in Pennsylvania, had adopted his 15-year old grandnephew,

respondent Constantin P. Cozinacis,[1] a Greek citizen domiciled in Greece. For the purpose of the adoption, the Greek Court appointed the Greek Consul at Chicago as a judge and directed decedent to appear before that Consul in lieu of a prescribed appearance before the Greek Court. It was the opinion of the Greek Court that the Greek Consul could assume the "duties of a judge" and perform "judicial acts" (R. 552a-556a).

Decedent appeared as instructed before the Greek Consul in Chicago who, in his capacity as a judge, conducted a proceeding in the Greek language behind closed doors (R. 87a). The Greek Consul did not permit decedent's attorney to appear in that proceeding (R. 49a, 87a) and did not provide an interpreter for decedent (R. 352a). After the proceeding, the Greek Consul submitted a report to the Greek Court which in due course issued the adoption decree. Neither decedent nor respondent appeared personally before the Greek Court.

After the adoption respondent tried to enter the United States under a quota preference as decedent's adopted son. Although the adoption was regarded as a slow but sure method of immigration (R. 421a), the immigration quota was heavily oversubscribed and respondent was unable to gain admission (R. 70a, 581a). Respondent, therefore, continued to live with his natural parents in Greece as though the adoption had not occurred. Apart from respondent's immigration efforts, decedent and respondent did not acknowledge or treat each other as father and son.

Decedent died domiciled in Pennsylvania five years after the adoption without ever having seen respondent. In a will made in 1948 decedent left his entire estate to his nephew, petitioner Constantin D. Cozinacis, apart from

[1] Petitioner and respondent are cousins.

a small legacy bequeathed to petitioner's mother (R. 2a-4a). Unlike respondent, petitioner enjoyed a warm and paternal relationship with decedent which remained unaltered by the adoption (R. 247a, 271a, 321a-323a, 458a-462a). Decedent did not change his will after the adoption and gave no indication that he intended to have the adoption work any change of the will.

Decedent's will was admitted to probate in Allegheny County, Pennsylvania. At the audit of decedent's estate held before the Orphans' Court of Allegheny County, respondent asserted that he, as decedent's adopted son, was entitled to decedent's entire estate under a Pennsylvania statute which gives a child adopted after the execution of a will an intestate share of the adopting parent's estate (Wills Act of 1947, P. L. 89, Sec. 7, 20 P. S. Sec. 180.7(4)). The Orphans' Court recognized the adoption and awarded decedent's estate to respondent. The determination of the Orphans' Court was affirmed upon petitioner's successive appeals to the Orphans' Court *in banc* and the Supreme Court of Pennsylvania.

How Federal Question is Presented

Petitioner raised the Federal question at every stage of the litigation before the Pennsylvania Courts. In each of the Pennsylvania Courts petitioner asserted that the Greek decree was void on the ground that the Greek Consul had no right to sit as a judge or to exercise judicial functions or to receive decedent's appearance in an adoption proceeding under the Consular Convention of 1902 between the United States and Greece. Evidence was offered in the Orphans' Court to show that under Greek law decedent was required to appear personally in court (Art. 1576, R. 574a, 291a) and, that without the consent of the United States, the Greek Consul was specifically appointed and

undertook to sit as a judge to comply with that requirement (R. 552a-556a; 522a-524a). Evidence was offered to show that such limited functions as the Greek Consul could exercise with respect to Greek citizens under the Convention of 1902 were inapplicable to decedent, since he was not then, and never had been a Greek citizen (R. 223a, 310a). Since no pleadings were required in the Orphans' Court, petitioner discussed the Federal question at length in his memorandum of law filed with that Court. The Federal question was reasserted by petitioner in his timely exceptions to the decree of the Orphans' Court (R. 720a-721a), in his brief and oral arguments upon the appeal to the Orphans' Court *in banc*, in his brief and oral arguments upon the appeal to the Supreme Court of Pennsylvania and in his timely petition for reargument to the Supreme Court of Pennsylvania (App. C, pp. 20-25).

Reasons for Granting the Writ

The Supreme Court of Pennsylvania granted recognition to a Greek decree based on judicial proceedings held before the Greek Consul at Chicago, Illinois. In those proceedings, the Greek Consul sat as a judge and performed a judicial act over an American citizen upon instructions from a Greek Court which believed that Greek Consuls had the right to act as judges in foreign countries. The proceedings before the Greek Consul were not authorized by the Consular Convention of 1902 between the United States and Greece nor by customary international law. Under Article VI of the United States Constitution, the Convention of 1902 is the supreme law of the land and binding on the judges of every State. The decision of the Pennsylvania Supreme Court draws into issue the validity of the Convention of 1902 and raises the question of wheth-

er a State court may recognize foreign consular acts which are unauthorized by treaty and which conflict with the policies of the United States. The question is of recurring importance to the United States and its inhabitants.

1. The decision of the Pennsylvania Supreme Court is in conflict with the decisions of this Court. Under the decisions of this Court, no consular officer of a foreign government has the right to sit as a judge or to exercise judicial functions in the United States without the consent of the United States. *Glass v. The Sloop Betsey*, 3 Dall. 6 (1792); *Schooner Exchange v. McFaddon*, 11 U. S. (7 Cranch.) 116 (1812); *Dianese v. Hale*, 91 U. S. 13 (1875). The Attorney General of the United States is in accord. 2 *Opinions Attorney General*, 378 (1830). In *Schooner Exchange v. McFaddon*, *supra*, this Court delared, at p. 136:

> "The jurisdiction of a nation within its own territory is necessarily exclusive and absolute. Any restriction upon it, deriving validity from an external source, would imply a diminution of its sovereignty to the extent of the restrictions and an investment of that sovereignty to the same extent in that power which could impose such restrictions. All exceptions, therefore, to the full and complete power of a nation within its own territories, must be traced up to the consent of the natien itself. They can flow from no other legitimate source."

The proceedings held before the Greek Consul in Illinois cannot be traced up to the consent of the United States. Consular powers of Greek Consuls in the United States were governed in 1955, and still are, by the Consular Convention of 1902 between the United States and Greece (33 Stat. 2122, 1 Malloy 855; Treaties In Force, p. 76, Jan. 1, 1961). Under Article X of that Convention, Greek Consuls have a limited right to take depositions, but no judi-

cial powers are conferred upon them by Article X or by any other provision of the Convention. Article X, so far as pertinent here, reads as follows:

> "Consuls-general, consuls, vice-consuls and consular agents may take at their offices, at their private residence, at the residence of the parties, or on board ship, the depositions of the captains and crews of vessels of their own country, of passengers on board of them, and of any other citizen of their nation."

The provisions of Article X obviously do not embrace the appearance of an American citizen before a Greek Consul sitting as a judge in an adoption proceeding. In fact, the Greek Consul did not even have the right to take decedent's deposition under Article X (had decedent's deposition been the object), since decedent was not then and never had been a Greek citizen.[2]

While no Consular Convention confers upon foreign consuls the right to exercise judicial powers, virtually every Consular Convention to which the United States is a party contains a clause, similar to Article X of the Consular Convention with Greece, setting forth powers under which foreign consul have the right to take depositions and legalize documents.[3] The decision of the Pennsylvania

[2] Decedent was born in Macedonia, Turkey and at the age of 16 immigrated to the United States where he remained until his death (R. 223a, 239a-240a, 538a). After decedent's departure from Turkey his birthplace was ceded to Greece (Vol. 2 *Encyclopedia Britannica, Balkan Wars*, pp. 986-989). Decedent therefore never became a Greek citizen. *Comizen v. United States*, 179 U. S. 101 (1900). Even if decedent had been a Greek citizen, he was obliged to renounce such citizenship upon becoming a naturalized citizen of the United States in 1925. (Act of June 27, 1952; C. 477, Title III, Ch. 2, Sec. 337, 66 Stat. 258, 8 U. S. C. A. 1448 (a)(2).)

[3] Belgium, 1880, Art. X, 21 Stat. 776; Serbia, 1881, Art. X, 22 Stat. 968; Spain, 1902, Art. 22, 33 Stat. 2105; Sweden, 1910, Art. X, 37 Stat. 1749; Germany, 1923, Art. 22, 44 Stat. 2132; Salvador, 1926, Art. 22, 46 Stat. 2817; Cuba, 1926, Art. 21, 44 Stat. 2471; Honduras, 1927, Art. 21, 45 Stat. 2618; Austria, 1928, Art. 18, 47 Stat. 1876; Norway, 1928, Art. 21, 47 Stat. 2135; Poland, 1931, Art. 21, 48 Stat. 1507; Finland, 1934, Art. 24, 49 Stat. 2659; Liberia, 1938, Art. 7, 54 Stat. 1751; Mexico, 1942, Art. 7, 57 Stat. 800; Philippines, 1947, Art. 8, 62 Stat. 1593; Costa Rica, 1948, Art. 8, 70 U. N. T. S. 143; United Kingdom, 1951, Art. 17, 165 U. N. T. S. 121

Supreme Court raises a question of whether the customary consular right to take depositions and legalize documents may be enlarged to cover a proceeding for which there is no precedent historically or as a matter of treaty.[4]

Consular powers are now exercisable in the United States by 2,000 foreign consuls from eighty different countries[5], affecting a vast number of persons within the United States, including American citizens, who are drawn to foreign consulates because of their national origins or on account of friends, relatives or other interests in foreign countries[6]. Foreign consuls frequently act upon instructions from foreign authorities who may be unfamiliar or unconcerned with the laws and policies of the United States. Where, as in the case at bar, an unauthorized consular function is discovered, it is in the interest of the United States that recognition be denied to that function. Denial of recognition may be the only effective remedy available to the United States citizen or inhabitant affected by the consular act, and this is of particular importance since foreign consuls are not obliged to observe Constitutional guarantees or due process. The Greek Consul in the case at bar, for example, held Court behind closed doors and denied decedent the right of counsel.

Denial of recognition to an unauthorized consular act is also a means of acquainting foreign consuls with the

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[4] *Ibid.* Adoption is not mentioned in the foregoing consular conventions. See also a survey of consular functions made by Harvard Law School in 1932 *26 Am. J. Int'l. Law. Supp. 180-375.*

[5] *Foreign Consular Offices in the United States 1963.* Dept. of State, Pub. No. 7511.

[6] The 1960 census calculates there are 33 million Americans of foreign white stock in the United States: *(U. S. Bureau of the Census, Statistical Abstract of the United States, 1963,* P. 33; Table No. 27.) The *Annual Report of the Attorney General: 1962,* P. 359, indicates 173 million entries were made into the United States by citizens and aliens in the fiscal year 1962. Alien entries exceeded 99 million.

laws and policies of the United States and of the limitations which such laws and policies impose upon consular powers. This is of particular significance where the foreign consul, as in the instant case, purports to exercise extraterritorial rights. In 1959 another Greek Court declined to appoint the Greek Consul at New York as a judge in an adoption matter since Greek Consuls "enjoyed judicial powers only in countries where extraterritorial rights existed" (R. 486a). In the light of the 1959 Greek decision, it is obvious that the Greek Consul in the case at bar exercised judicial functions as a matter of extraterritorial privilege. If, despite the plain language of the order appointing him, the Greek Consul did not intend to serve as a judge, he nevertheless assumed jurisdiction over decedent on the basis of decedent's alleged Greek citizenship (R. 538a, 542a, 555a). Such jurisdiction was exercisable only in countries whose legal systems were considered so inferior that justice could not be obtained in them by foreign citizens. Reid v. Covert, 354 U. S. 1, 56-64 (1956). As the Greek Court observed in the 1959 decision, "Clearly this is not the case here" (R. 486a).

2. The decision of the Pennsylvania Supreme Court is a conflict in principle with the immigration laws and policies of the United States. Section 205(b) of the Immigration and Nationality Act, was amended in 1961 (Act of Sept. 26, 1961, P. L. 87-301, 75 Stat. 650, 8 U. S. C. A. 1155). Under the amended law, no preferential status is given to a child adopted unless "the petitioner and spouse personally saw and observed the child prior to or during the adoption proceedings." This legislation was enacted by the 87th Congress at the instance of responsible social and governmental agencies and other expert observers in this country who urged that proxy or sight unseen adop-

tions be abolished (*Congressional Record*, Sept. 6, 1961, pp. 17134-17135). Support for the legislation was tendered by the Department of State, Department of Justice and Department of Health, Education and Welfare of the United States. Even before the amended law, the Immigration Board of Appeals refused to recognize an adoption where the adopting parent appeared before the Portuguese Consulate at New York (Matter of B ....., 5, I&N Dec. 733 (1954)). It was thought that the new Immigration Law would end proxy adoptions and in that respect the Court in *Montgomery v. Ffrench*, 299 Fed. 2d 730, Fn. 1, p. 731, observed: "The amended law abolished proxy adoptions." As immigration efforts were the only incident of the adoption in the case at bar, recognition of that adoption by the Supreme Court of Pennsylvania conflicts in principle with the amended immigration law and raises doubts as to whether that law has accomplished its purpose.

3. The decision of the Pennsylvania Supreme Court is in conflict with the decisions of the highest Courts of sister States. Modern adoption statutes, including those of Pennsylvania, contemplate a complete severance of the child's ties and relationships with its natural family and, in the light of such statutes, public policy demands that an adoption carry with it complete breaking of old ties. *Amer. Jur. 2d, Adoption*, Secs. 83, 85, pp. 927-28. In keeping with this principle, the Supreme Court of New Jersey and the Supreme Court of Virginia denied recognition to Greek adoptions on the ground that such adoptions were contrary to their public policies. *Guaranty Bank & Trust Co. v. Gillies*, 8 N. J. 88, 83 A. 2d 889 (1951); *Doulgeris v. Bambacus*, 127 S. E. 2d 145 (1962). The New Jersey decision is particularly pertinent since there, as here, the

adopting parent appeared before a Greek Consul in the United States, which prompted the New Jersey Court to express doubts as to whether the Greek Court had jurisdiction to render a Decree. It appeared to the New Jersey Court that immigration rather than adoption might have been the purpose behind the proceeding. In the only other reported case of a Greek adoption, the First District Court of Appeal of Florida also refused to recognize the adoption on the ground of public policy. *Tsilidis v. Pedakis*, Fla. 132 So. 2d 9 (1961).

The decision of the Supreme Court of Pennsylvania appears to be the first reported case in this country under which inheritance rights were extended to an adopted child who never established a parent child relationship with his adoptive parent and continued to live with his natural family following the adoption as though the adoption had never occurred. Cf. *Sharer v. Nash*, 181 Ark. 1112, 29 S. W. 2d 298 (1930); *Noel v. Olszewski*, 350 Ill. App. 264, 112 N. E. 2d 727 (1953); *Jaffee v. Jacobson*, 48 F. 21 (1891). In prior decisions, the Supreme Court of Pennsylvania had observed the principle that adoption contemplates a complete severance of the child's natural ties. *Harvey Adoption Case*, 375 Pa. 1, 99 A. 2d 276 (1953); *Schwab Adoption Case*, 355 Pa. 534, 50 A. 2d 504 (1947); *Collins Estate*, 393 Pa. 195, 142 A. 2d 178 (1958). The Pennsylvania Supreme Court's departure from that principle in this case is of interest to the United States which, through its immigration legislation, has entered the area of foreign adoptions.

Conclusion

The decision of the Pennsylvania Supreme Court raises a question of substance and of recurring importance to the United States, it is respectfully requested that this Petition for Writ of Certiorari be granted.

Respectfully submitted,

EDWARD P. GOOD,
Counsel for Petitioner.

Of Counsel:
THOMAS A. LAZAROFF.

October 1963.

APPENDIX A

Opinion Below

IN THE

SUPREME COURT OF PENNSYLVANIA

WESTERN DISTRICT

ESTATE OF PETER CHRISTOFF, deceased.

APPEAL OF CONSTANTIN D. COZINACIS.

No. 91 March Term 1963.

Appeal from Decree of the Orphans' Court of Allegheny County, No. 3617 of 1960.

Entered January 14, 1963.

OPINION

JONES, B. R., J. Filed: July 2, 1963.

This is an appeal from a decree of the Orphans' Court of Allegheny County which awarded the entire estate of a Pennsylvania decedent, Peter Christoff, to one Constantin Peter Kouzinakis [Peter], a resident of Greece, on the basis of a decree of adoption rendered by a Court of Greece which decree purports to make Peter the adopted son of the decedent.

On August 12, 1960, Peter Christoff [decedent], an American citizen domiciled in Pittsburgh, died unmarried and without natural issue surviving. His last will and testament, dated June 18, 1948, named Constantin D. Cozinacis, [Constantin], presently a resident in Prague, Czechoslovakia, as the residuary legatee.

Appendix A

Constantin Peter Kouzinakis [Peter] is a grandnephew of decedent and by the terms of a decree of the Court of First Instance of Edhessa, Greece, dated October 17, 1955, Peter was declared to be the adopted son of the decedent.

At the audit of the decedent's estate before the Orphans' Court of Allegheny County, Peter claimed the entire balance for distribution in decedent's estate as an after-adopted child, in accordance with the provisions of Section 7(4) of the Wills Act of 1947, P. L. 89, 20 PS 180.4. The Court below recognized the foreign decree of adoption and decreed that Peter was the adopted son of the decedent and entitled to the award of the entire balance of the estate. From that decree Constantin appeals.

Fundamentally, the issue here is the recognition, if any, to be accorded by the Courts of this Commonwealth to the decree of adoption rendered by the Court in Greece.

Certain principles are well settled: (a) had Peter come from Greece to Pennsylvania and been adopted in Pennsylvania by the decedent the award of the balance of this estate to him would have been proper; (b) the incidents of adoption as to inheritance as against the status of adoption in another state or country are to be determined by the laws of the decedent's domicile. In *Zoell's Estate*, 345 Pa. 413, 29 A. 2d 31, we held that, while Pennsylvania recognizes the status of an adopted child in another state, the incidents of that status in such other state cannot alter our laws of inheritance and the estate of a decedent domiciled in Pennsylvania is distributable in accordance with our laws of inheritance. *A fortiori*, such a rule applies

when the status of adoption was created by the decree of a foreign country.

Although we must give full faith and credit under the mandate of the United States Constitution to a decree of adoption by a Court of a sister state if such Court had jurisdiction over the parties and the subject matter, judicial decrees rendered in foreign countries depend for recognition in Pennsylvania upon comity: *Commonwealth ex rel. v. Yarnell*, 313 Pa. 244, 250, 169 A. 370; *Commonwealth ex rel. v. Doughty*, 187 Pa. Superior Ct. 499, 506, 144 A. 2d 521; *Commonwealth ex rel. v. Manzi*, 120 Pa. Superior Ct. 360, 367, 182 A. 795. Under the principles of comity the recognition of a foreign decree is not a matter of absolute obligation. *Hilton v. Guyot*, 159 U. S. 113, 16 S. Ct. 139; 11 Am. Jur. §5, p. 299. We do, and will, treat the judgment and decree of a foreign judicial tribunal with the greatest respect and deference. Nevertheless, it is the primary duty of the Courts of this Commonwealth to ensure that justice is done. However, we forebear to promulgate a rule that a decree of a foreign tribunal must be extended the same degree of faith and credit as that which would be extended to the judicial decree of a sister state. In *Hilton v. Guyot*, *supra*, (p. 205), the United States Supreme Court stated: "It must, however, always be kept in mind that it is the paramount duty of the Court, before which any suit is brought, to see to it that the parties have had a fair and impartial trial, before a final decision is rendered against either party. When the action is brought in a Court of this country by a citizen of a foreign country against one of our own citizens . . . and the foreign judgment appears to have been rendered

by a competent Court, having jurisdiction of the cause and of the parties, and upon due allegations and proofs, and opportunity to defend against them, and its proceedings are according to the course of a civilized jurisprudence, and are stated in a clear and formal record, the judgment is *prima facie* evidence, at least, of the truth of the matter adjudged; and it should be held conclusive upon the merits tried in the foreign Court, unless some special ground is shown for impeaching the judgment, as by showing that it was affected by fraud or prejudice, or that, by the principles of international law, and by the comity of our own country, it should not be given credit and effect."

Where, as in the case at bar, it clearly appears that one of our domiciliaries invoked the process and the jurisdiction of a foreign tribunal we must ordinarily grant recognition and credit to the decree of such a tribunal unless the decree is so palpably tainted by fraud or prejudice as to outrage our sense of justice, or where the process of the foreign tribunal was invoked to achieve a result contrary to our laws or public policy or to circumvent our laws or public policy.

We have carefully reviewed the instant record and from such review we find agreement with the learned Court below that the record clearly shows that the decedent desired to bring one of his Greek relatives to the United States; that he wished to adopt Peter; that he was advised by counsel that, upon such adoption, the adoptee would become his heir-at-law; that he, nevertheless, proceeded with adoption proceedings in Greece and did all things necessary to procure Peter's adoption as his son in accordance with the requirements of the Greek Court;

that, subsequent to the rendition of the decree of adoption, he made a sworn petition to the United States immigration authorities for the issuance of an immigrant visa to Peter giving Peter's relationship to him as "adopted son". Our examination of the record further impels us to agree with the Court below that the procedure and findings of the Greek Court were in accordance with Greek law and the weight of judicial authority in Greece; that the incidents of adoption in Greece are not so dissimilar from those attendant upon adoption here as to bring into play against its recognition "a positive, well-defined, universal public sentiment, deeply integrated in the customs and beliefs of the people [of this Commonwealth] and in their conviction of what is just and right and in the interests of the public weal" (*Mamlin v. Genoe*, 340 Pa. 320, 325, 17 A. 2d 407); that if there was fraud or mistake, *and we are convinced there was not*, in the procurement of the decree, it was not occasioned by Peter or his family; that the decedent effectively consented to the jurisdiction of the Greek Court which had jurisdiction of the subject matter (Restatement, Second, Conflict of Laws, Tentative Draft No. 3, §8; *Ibid.*, Tentative Draft No. 4, §142; *McQuiston's Adoption*, 238 Pa. 304, 312, 86 A. 205).

We are convinced of the validity of the decree of the Greek Court whereby Peter acquired the status of an adopted son of the decedent and that, on the principles of comity, we should grant recognition to this decree. Peter, having acquired the status of an adopted son, the incidents of inheritance attaching to such status in Pennsylvania must govern Peter's claim in this estate.

Decree affirmed. Costs to be paid by estate.

APPENDIX B

Treaty and Constitutional Provision Involved

TREATY PROVISION

CONSULAR CONVENTION WITH GREECE OF 1902
(33 Stat. 2122, 2128; 1 Malloy 855, 858)

ARTICLE X

Consuls-general, consuls, vice-consuls and consular agents may take at their offices, at their private residence, at the residence of the parties, or on board ship the depositions of the captains and crews of vessels of their own country, of passengers on board of them, and of any other citizen of their nation. They may also receive at their offices, conformably to the laws and regulations of their country, all contracts between the citizens of their country and the citizens or other inhabitants of the country where they reside, and even all contracts between the latter, provided they relate to property situated, or to business to be transacted, in the territory of the nation to which the said consular officer may belong.

Such papers and official documents, whether in the original, in copies or in translation, duly authenticated and legalized by the consuls-general, consuls, vice-consuls and consular agents, and sealed with their official seal, shall be received as legal documents in courts of justice throughout the United States and Greece.

CONSTITUTIONAL PROVISION

THE CONSTITUTION OF THE UNITED STATES
ARTICLE VI, CLAUSE 2

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties

made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any thing in the Constitution or Laws of any State to the Contrary notwithstanding.

APPENDIX C

Proceedings in the Supreme Court of the Commonwealth of Pennsylvania, Western District

IN THE
SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

IN *RE*: ESTATE OF PETER CHRISTOFF, deceased

APPEAL OF CONSTANTIN D. COZINACIS

No. 91 March Term, 1963

DOCKET ENTRIES.

Appeal from the decree of the Orphans' Court of Allegheny County at No. 3617 of 1960.

January 18, 1963, Appeal and affidavit filed and writ exit, returnable third Monday of March, 1963.

January 18, 1963, Appearance for appellee, filed.

January 25, 1963, Record, envelope of testimony, and 2 envelopes of exhibits, filed.

March 25, 1963, Argued.

Appendix C

DECISION.

July 2, 1963, Decree affirmed. Costs to be paid by estate.

JONES, B. R., J.

July 11, 1963, Petition for reargument, filed

July 17, 1963, Answer filed.

ORDER.

July 20, 1963, Petition denied.

Per Curiam.

July 23, 1963, Remitted.

For Appellant: Thomas A. Lazaroff.

For Appellee: Stephen E. Nash, Blaxter, O'Neill, Honston & Nash.

PETITION FOR REARGUMENT.

IN THE

SUPREME COURT OF PENNSYLVANIA

WESTERN DISTRICT

ESTATE OF PETER CHRISTOFF, deceased

No. 91 March Term, 1963.

To the Honorable, the Justices of Said Court:

The petition of Constantin D. Cozinacis, appellant in the above case, by his Attorney, Thomas A. Lazaroff, respectfully petitions this your Honorable Court to grant him a rehearing, and in support thereof, submits the within petition:

Appendix C

PRELIMINARY STATEMENT

The Orphans' Court of Allegheny County, in a decree dated September 26, 1962, awarded the entire estate of decedent, Peter Christoff, to appellee, Constantine P. Kouzinakis, on the ground that appellee was decedent's after-adopted child within the provisions of Section 7(4) of the Wills Act of 1947, P.L. 89, 20 P.S. Sec. 1804.

Exceptions to the decree of September 26, 1962, filed by appellant Constantin D. Cozinacis the residuary legatee under decedent's will, were dismissed by the Orphans' Court *in banc* in a decree dated January 14, 1963. Upon appeal, this Court affirmed the decree of the Orphans' Court in a decision dated July 2, 1963.

Two basic questions were presented on appeal to this Court: (1) Was the Greek decree, upon which appellee relied, valid; (2) Even if the Greek decree was valid did appellee thereby acquire the status of an after-adopted child within the meaning of Section 7(4) of the Wills Act of 1947? This Court found that the Greek decree was valid under Greek law and that appellee had acquired the status of an adopted child under Greek law. It is respectfully submitted that this Court, in testing the Greek decree and appellee's status under Greek law, overlooked or misapprehended the import of principles of domestic law which render the Greek decree unenforceable in this country and refute appellee's claim that he acquired the status of an after-adopted child.

I

This Court in upholding the validity of the Greek decree overlooked or misapprehended the import of the principle

that even if foreign law permits the designation of a foreign consul to act as a judge in adoption proceedings, no foreign consul may exercise judicial functions within the United States. The argument in this respect was fully developed under Point II, subdivision B of appellant's brief (pages 49-51) which is entitled "Even If Greek Law Permits The Designation Of a Greek Consul As a Judge, No Greek Consul May Exercise Judicial Functions Within the United States." Although this Court found the Greek proceedings valid under Greek law, it did not address itself in its decision to the question of whether the judicial proceedings at the Greek consulate were valid under the laws of the United States.

The treaty between the United States and Greece (Consular Convention of 1903, 33 U. S. Statutes at Large 2122) neither authorizes nor contemplates the exercise of judicial functions by consuls. In the light of the treaty, which is the Supreme Law of the Land and binding on the courts of every state under Article 6 of the United States Constitution, the judicial proceedings before the Greek consul in Chicago, though essential to the Greek decree, were void for all purposes in this country (*Daimes v. Hale*, 91 U. S. 13 and other authorities cited at II B of appellant's brief). Recognition of the Greek decree which rests in part upon the exercise of unauthorized judicial functions by a foreign consul in this country in effect condones such functions and draws in question the validity of the treaty of 1903 between the United States and Greece (page 720 a of Record). It is respectfully submitted that the decision of this Court which appears to sanction the exercise of extra-territorial judicial functions in the United States by a foreign consul at the behest of a court of a foreign country,

in derogation of the sovereignty of the United States, requires reconsideration and, upon such reconsideration, requires invalidation of the unauthorized judicial proceedings before the Greek Consul.

II

This Court in finding that appellee had acquired the status of an adopted son of decedent under Greek law overlooked or misapprehended the import of Section 7(4) of the Wills Act of 1947, which was intended to extend inheritance rights to adopted children only when such adopted children, unlike appellee, had severed all ties with their natural parents and entered into a genuine family relationship with their adopting parents. In this respect appellant, in stating the questions involved on the appeal, framed the issue as follows: "Should the adoption decree have been rejected on the ground that the adopted person did not sever his ties with his natural parents and assume a family relationship with his adopting parent?" Appellant thereupon argued under Point 1, sub-division B of his brief (pages 30-40) that appellee was not an adopted child within the meaning of the after adoption statute of Pennsylvania.

In ascertaining the rights of an adopted child, the inheritance laws of Pennsylvania must be read in the light of the adoption laws of Pennsylvania. The adoption laws of Pennsylvania exclude the concept of adoption of a minor unless there is a severance of natural ties and the assumption of new ties with the adopted family. Accordingly Section 7(4) of the Wills Act of 1947 does not contemplate the extension of inheritance rights to a child who has retained all natural family relationships and has

assumed no relationship with his adopting family. (See Point I B, pages 30-40, of appellant's brief).

Research has failed to disclose a single instance in which inheritance rights were accorded in this country to an adopted child who, as in the instant case, never saw his adoptive parent and continued to live with his natural family following a claimed adoption as though the adoption had never occurred. On the other hand, New Jersey and Virginia, whose adoption and inheritance laws bear close kinship to corresponding laws of Pennsylvania, rejected Greek adoption decrees where the adopted child did not sever natural ties and assume new ties with the adopting parents. (*Guaranty Bank & Trust Co. v. Gillies*, 8 N. J. 88, 83 A. 2d 889; *Boulgeris v. Bambacas*, 127 S. E. 2d 445).

The decision in this case also appears to be the first reported case of the recognition of an unconsummated "sight unseen" or "proxy" adoption, which in the circumstances of this case, tends to aid those who would foster such adoptions and to frustrate the efforts of the many governmental and social agencies which are dedicated to the proposition that such adoptions are contrary to the best interests of the child, the natural parents, the adoptive parents and society as a whole (See Point I A, pages 24-27 of appellant's brief).

In the light of the adoption laws of Pennsylvania, the decisions of the courts of sister states and the abolition of sight unseen or proxy adoptions in this country (*Montgomery v. Pfrench*, 299 F. 2d 730), it is respectfully submitted that there is a serious question as to whether Section 7(4) of the Wills Act of 1947 could have been intended to extend inheritance rights to a child adopted by proxy

who never severed his natural family ties nor assumed new ties with his adoptive family. It is further submitted respectfully that this question requires consideration and, upon such consideration, requires rejection of appellee's claim on the ground that appellee, whatever status he may have acquired under Greek law, was not an adopted child within the meaning of Section 704 of the Wills Act of 1947.

WHEREFORE, appellant, Constantin D. Cozinacis, respectfully prays that this Honorable Court grant a reargument in this appeal.

Respectfully submitted,

s. THOMAS A. LAZAROFF,
Attorney for Appellant.

ANSWER TO PETITION FOR REARGUMENT.

IN THE
SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

ESTATE OF PETER CHRISTOFF, deceased
No. 91 March Term, 1963.

Appellant's first proposition, that the proceedings at the Greek consulate were not authorized under the Consular Convention of 1903 between the United States and Greece, is necessarily based upon the erroneous premise that the Greek consul in Chicago performed a judicial act in derogation of the jurisdiction of the United States. To the

contrary, the consul's "* * * function of receiving the consent of one who had already voluntarily submitted himself generally to the jurisdiction of the Greek court and who had himself requested the appointment of the consul for this specific purpose was not an exercise of extraterritorial judicial powers on American soil" (pages 13-14 of Appellee's brief). No power to make a judgment or decree was delegated to the Greek consul by reason of the Interlocutory Order of the Greek court (pages 552a-556a), nor did the consul assume to exercise judicial jurisdiction over the person of the decedent by virtue of the latter's physical presence in the consulate. The Greek court simply directed the consul to perform the ministerial act of receiving the consent of the decedent, Peter Christoff, and that is all he did. The mere fact that he was designated a "judge of introduction" to execute this function obviously could not make the function itself a judicial one. The question properly before this Court was whether or not Greek law and procedure authorized the delegation of this ministerial act to the Greek consul in Chicago. This Court has fully considered and properly determined that issue holding "* * * that the procedure and findings of the Greek court were in accordance with Greek law and the weight of judicial authority in Greece". (At page 5 of the Court's Opinion).

The Appellant's second proposition was also fully presented to this Court in his brief and orally and was met by our argument under Part V of Appellee's brief (pages 32-36 and, in particular, pages 33-34 thereof).

We submit that Appellant's Petition for Reargument fails to set forth any points that were either overlooked or

misapprehended by this Court in arriving at its decision and hence should be dismissed.

Respectfully submitted,

BLAXTER, O'NEILL, HOUSTON & NASH,

By: s/ STEPHEN E. NASH.

NOTICE OF INTENTION TO FILE PETITION FOR WRIT OF CERTIORARI IN THE SUPREME COURT OF THE UNITED STATES.

IN THE

SUPREME COURT OF PENNSYLVANIA

WESTERN DISTRICT

ESTATE OF PETER CHRISTOFF, deceased

No. 91 March Term, 1963

To the Honorable, John C. Bell, Jr., Chief Justice of the Supreme Court of Pennsylvania, and the Associate Justices of the Supreme Court of Pennsylvania:

You are hereby notified that Constantin D. Cozinacis, appellant, through his Attorney, Thomas A. Lazaroff, intends to file a Petition for Certiorari to the Supreme Court of the United States from the decision of the Supreme Court of Pennsylvania entered in the above entitled case.

1. Appellant respectfully requests that the record of the proceedings in the above entitled case be certified to

the Clerk of the Supreme Court of the United States, said certification shall include:

(a) The printed record.
(b) The Opinion of the Supreme Court of Pennsylvania.
(c) The Petition for Reargument.
(d) The Answer to Petition for Reargument.
(e) Order Refusing Petition for Reargument.
(f) Docket Entries.

2. The question presented on the application for certiorari is:

Whether the Supreme Court of Pennsylvania properly granted recognition to the decree of a Greek Court declaring that an American citizen domiciled in Pennsylvania had adopted a Greek citizen domiciled in Greece in proceedings which required the American citizen to appear before a Greek Consul, who for that purpose was appointed as a judge to perform a judicial act in Chicago, Illinois over the American citizen, without the consent of the United States whose Consular Convention with Greece does not confer upon Greek Consuls the right to sit as judges or to exercise judicial functions within the United States.

Respectfully submitted,

s/ THOMAS A. LAZAROFF,
Attorney for Appellant.